

# Notice of Allowability

Application No.

09/885,445

Examiner

Kathryn Odland

Applicant(s)

FRATER ET AL.

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 16 July 2004.
2. ☒ The allowed claim(s) is/are 23-33, 125-129 and 132-142.
3. ☒ The drawings filed on 20 June 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

Henry Bennett  
Supervisory Patent Examiner  
Group 3703

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Alan Kagen on September 21, 2004.

The application has been amended as follows:

In claim 127, line 12, the phrase, "wherein, by selectively varying the length of the headgear straps" has been deleted and the phrase —wherein, at any given length of the headgear straps that is established—has been inserted therefor.

2. The following is an examiner's statement of reasons for allowance: the prior art of record does not show, singly or in combination, the combination of elements recited in claims 23, 127, 128, 129, 132, 134 and/or 135.

Claims 23, 128 and 129 have been amended to include the limitation, "without adjusting the headgear strap" where the seal is maintaining between the mask and the user over an operating range. This is not demonstrated in the prior art of record. Venegas does not recite a seal that is maintained over the operating range that would not require adjustment of the straps. The straps would need to be adjusted during operation to maintain the seal. If the straps were applied too tightly at the onset the apparatus would not operate within the range claimed.

Art Unit: 3743

Claim 127 has been amended to include the limitation, "wherein, at any given length of the headgear straps that is established" where upon initial setup of the mask system, the gusset portion is movable within a range of displacement set at a distance between the mask shell and the cushion. This is not demonstrated in Venegas, the seal cannot be maintained at any given length of the headgear strap adjustment. In Venegas, the straps would need to be tightly applied for the seal to be maintained. In the instant application, the headgear straps adjusted at any length would maintain the seal over the operating pressure.

Claim 132 has been amended to include the recitation that the pressure dependent projected area is variable over the normal operating pressure range. This is not demonstrated in Venegas. It is only beyond the normal operating pressure range that the device of Venegas could expand and would require a pressure beyond the normal operating for the projected area to get larger.

Claim 134 and 135 are in means-plus-function format according to 35 USC 112 6<sup>th</sup> paragraph. The means-plus-function is designated by the pages referenced by applicant on page 15 of the amendment dated July 16, 2004.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

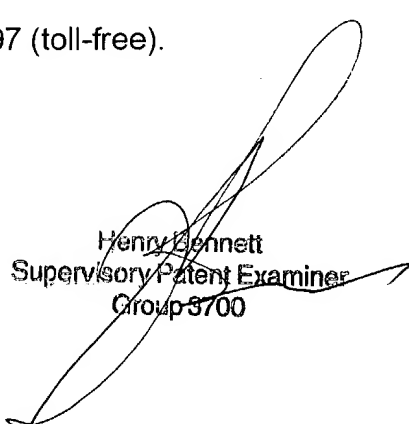
Art Unit: 3743

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Odland whose telephone number is (703) 306-3454. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KO



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